

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

HOWARD E. MARTIN, III,

Plaintiff, :

v. :

R. BERNARD MUNDY,

Defendant. :

Case No. 2:24-cv-327
Judge Sarah D. Morrison
Magistrate Judge Karen L.
Litkovitz

ORDER

Plaintiff Howard E. Martin, III, a state prisoner proceeding without the assistance of counsel, filed this action on January 25, 2024. This matter is before the Court on the April 25, 2024 Report and Recommendation issued by the Magistrate Judge. (ECF No. 8.)

The Magistrate Judge recommended that the Court dismiss Mr. Martin's Complaint because he failed to fully disclose all of his previously dismissed cases (or "strikes") pursuant to the Prison Litigation Reform Act of 1995 ("PLRA"), 28 U.S.C. § 1915(a)-(h). (*Id.*, PAGEID # 26.) The Magistrate Judge determined that, as a prisoner, Mr. Martin is subject to the requirements of the PLRA, including the "three strikes" provision that restricts a prisoner to three *in forma pauperis* cases that have been dismissed on frivolous or malicious grounds in federal court—Mr. Martin had also been warned by this Court that he must disclose dismissed cases/strikes if he wanted to proceed *in forma pauperis*. (*Id.*) Furthermore, the Magistrate Judge concluded that even if Mr. Martin had fully disclosed all his

relevant dismissals/strikes, he has failed to satisfy the narrow exception under the “three strikes” provision, which allows prisoners to proceed *in forma pauperis* if he is under “imminent danger of serious physical injury.” (*Id.*)

Mr. Martin an Objection (ECF No. 9) to the Report and Recommendation and a “Notice” (ECF No. 11). Neither addresses why he disclosed some but not all of his dismissed cases/strikes nor if he is under “imminent danger of serious physical injury.”

For the reasons set forth in the Report and Recommendation, Mr. Martin’s Objection is **OVERRULED**. The Court **ADOPTS** and **AFFIRMS** the Report and Recommendation and **DISMISSES** the Complaint **with prejudice**. Because reasonable jurists would not disagree with this conclusion, the Court **CERTIFIES** that any appeal of this Order would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3), and on that basis **DENIES** Mr. Martin’s leave to proceed *in forma pauperis* on appeal.

The Clerk is **DIRECTED** to **TERMINATE** this case from the docket records of the United States District Court for the Southern District of Ohio.

IT IS SO ORDERED.

/s/ Sarah D. Morrison
SARAH D. MORRISON
UNITED STATES DISTRICT JUDGE